

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 169

HOUSE BILL 2828

AN ACT

AMENDING SECTION 23-1061, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1061, Arizona Revised Statutes, is amended to
3 read:

4 23-1061. Notice of accident; form of notice; claim for
5 compensation; reopening; payment of compensation

6 A. Notwithstanding section 23-908, subsection E, no claim for
7 compensation shall be valid or enforceable unless the claim is filed with the
8 commission by the employee, or if resulting in death by the parties entitled
9 to compensation, or someone on their behalf, in writing within one year after
10 the injury occurred or the right thereto accrued. The time for filing a
11 compensation claim begins to run when the injury becomes manifest or when the
12 claimant knows or in the exercise of reasonable diligence should know that
13 the claimant has sustained a compensable injury. Except as provided in
14 subsection B of this section, neither the commission nor any court shall have
15 jurisdiction to consider a claim which is not timely filed under this
16 subsection, except if the employee or other party entitled to file the claim
17 has delayed in doing so because of justifiable reliance on a material
18 representation by the commission, employer or insurance carrier or if the
19 employee or other party entitled to file the claim is insane or legally
20 incompetent or incapacitated at the time the injury occurs or the right to
21 compensation accrues or during the one-year period thereafter. If the
22 insanity or legal incompetence or incapacity occurs after the one-year period
23 has commenced, the running of the remainder of the one-year period shall be
24 suspended during the period of insanity or legal incompetence or incapacity.
25 If the employee or other party is insane or legally incompetent or
26 incapacitated when the injury occurs or the right to compensation accrues,
27 the one-year period commences to run immediately upon the termination of
28 insanity or legal incompetence or incapacity. The commission upon receiving
29 a claim shall give notice to the carrier.

30 B. Failure of an employee or any other party entitled to compensation
31 to file a claim with the commission within one year or to comply with section
32 23-908 shall not bar a claim if the insurance carrier or employer has
33 commenced payment of compensation benefits under section 23-1044, 23-1045 or
34 23-1046, except that the payments provided for by section 23-1046, subsection
35 A, paragraph 1 and section 23-1065, subsection A shall not be considered
36 compensation benefits for the purposes of this section.

37 C. If the commission receives a notification of the injury, the
38 commission shall send a claim form to the employee.

39 D. The issue of failure to file a claim must be raised at the first
40 hearing on a claim for compensation in respect to the injury or death.

41 E. Within ten days after receiving notice of an accident, the employer
42 shall inform his insurance carrier and the commission on such forms as may be
43 prescribed by the commission.

44 F. Each insurance carrier and self-insuring employer shall report to
45 the commission a notice of the first payment of compensation and shall

1 promptly report to the commission and to the employee by mail at his last
2 known address any denial of a claim, any change in the amount of compensation
3 and the termination thereof, except that claims for medical, surgical and
4 hospital benefits which are not denied shall be reported to the commission in
5 the form and manner determined by the commission. In all cases where
6 compensation is payable, the carrier or self-insuring employer shall promptly
7 determine the average monthly wage pursuant to section 23-1041. Within
8 thirty days of the payment of the first installment of compensation, the
9 carrier or self-insuring employer shall notify the employee and commission of
10 the average monthly wage of the claimant as calculated, and the basis for
11 such determination. The commission shall then make its own independent
12 determination of the average monthly wage pursuant to section 23-1041. The
13 commission shall within thirty days after receipt of such notice notify the
14 employee, employer and carrier of such determination. The amount determined
15 by the commission shall be payable retroactive to the first date of
16 entitlement. The first payment of compensation shall be accompanied by a
17 notice on a form prescribed by the commission stating the manner in which the
18 amount of compensation was determined.

19 G. Except as otherwise provided by law, the insurance carrier or
20 self-insuring employer shall process and pay compensation and provide
21 medical, surgical and hospital benefits, without the necessity for the making
22 of an award or determination by the commission.

23 H. ON A CLAIM THAT HAS BEEN PREVIOUSLY ACCEPTED, an employee may
24 reopen the ~~employee's~~ claim to secure an increase or rearrangement of
25 compensation or additional benefits by filing with the commission a petition
26 requesting the reopening of the employee's claim upon the basis of a new,
27 additional or previously undiscovered temporary or permanent condition, which
28 petition shall be accompanied by a statement from a physician setting forth
29 the physical condition of the employee relating to the claim. A CLAIM SHALL
30 NOT BE REOPENED IF THE INITIAL CLAIM FOR COMPENSATION WAS PREVIOUSLY DENIED
31 BY A NOTICE OF CLAIM STATUS OR DETERMINATION BY THE COMMISSION AND THE NOTICE
32 OR DETERMINATION WAS ALLOWED TO BECOME FINAL AND NO EXCEPTION APPLIES UNDER
33 SECTION 23-947 EXCUSING A LATE FILING TO REQUEST A HEARING. A claim shall
34 not be reopened because of increased subjective pain if the pain is not
35 accompanied by a change in objective physical findings. A claim shall not be
36 reopened solely for additional diagnostic or investigative medical tests, but
37 expenses for any reasonable and necessary diagnostic or investigative tests
38 that are causally related to the injury shall be paid by the employer or the
39 employer's insurance carrier. Expenses for reasonable and necessary medical
40 and hospital care and laboratory work shall be paid by the employer or the
41 employer's insurance carrier if the claim is reopened as provided by law and
42 if these expenses are incurred within fifteen days of the date that the
43 petition to reopen is filed. The payment for such reasonable and necessary
44 medical, hospital and laboratory work expense shall be paid for by the
45 employer or the employer's insurance carrier if the claim is reopened as

1 provided by law and if such expenses are incurred within fifteen days of the
2 filing of the petition to reopen. Surgical benefits are not payable for any
3 period prior to the date of filing a petition to reopen, except that surgical
4 benefits are payable for a period prior to the date of filing the petition to
5 reopen not to exceed seven days if a bona fide medical emergency precludes
6 the employee from filing a petition to reopen prior to the surgery. No
7 monetary compensation is payable for any period prior to the date of filing
8 the petition to reopen.

9 I. Upon the filing of a petition to reopen a claim the commission
10 shall in writing notify the employer's insurance carrier or the self-insuring
11 employer, which shall in writing notify the commission and the employee
12 within twenty-one days after the date of such notice of its acceptance or
13 denial of the petition. The reopened claim shall be processed thereafter in
14 like manner as a new claim.

15 J. The commission shall investigate and review any claim in which it
16 appears to the commission that the claimant has not been granted the benefits
17 to which such claimant is entitled. If the commission determines that
18 payment or denial of compensation is improper in any way, it shall hold a
19 hearing pursuant to section 23-941 within sixty days after receiving notice
20 of such impropriety. ANY CLAIM FOR TEMPORARY PARTIAL DISABILITY BENEFITS
21 UNDER THIS SUBSECTION MUST BE FILED WITH THE COMMISSION WITHIN TWO YEARS
22 AFTER THE DATE THE CLAIMED ENTITLEMENT TO COMPENSATION ACCRUED OR WITHIN TWO
23 YEARS AFTER THE DATE ON WHICH AN AWARD FOR BENEFITS ENCOMPASSING THE
24 ENTITLEMENT PERIOD BECOMES FINAL. A CLAIM FOR TEMPORARY PARTIAL DISABILITY
25 COMPENSATION SHALL BE DEEMED TO ACCRUE WHEN THE EMPLOYEE KNEW OR WITH THE
26 EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN THAT THE CARRIER,
27 SELF-INSURED EMPLOYER OR SPECIAL FUND DENIED OR IMPROPERLY PAID COMPENSATION.
28 A CLAIM FOR TEMPORARY PARTIAL DISABILITY BENEFITS SHALL NOT BE DEEMED TO HAVE
29 ACCRUED ANY EARLIER THAN THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
30 SUBSECTION.

31 K. When there is a dispute as to which employer, or insurance carrier,
32 is liable for the payment of a compensable claim, the commission may, by
33 order, MAY designate the employer or insurance carrier which shall pay the
34 claim. Payment shall begin within fourteen days after the employer or
35 insurance carrier has been ordered by the commission to commence payment.
36 When a final determination has been made as to which employer or insurance
37 carrier is actually liable, the commission shall direct any necessary
38 monetary adjustment or reimbursement among the parties or carriers involved.

39 L. Upon application to the commission, and for good cause shown, the
40 commission may direct that a document filed as a claim for compensation
41 benefits be designated as a petition to reopen, effective as of the original
42 date of filing. In like manner upon application and good cause shown, the
43 commission may direct that a document filed as a petition to reopen be
44 designated a claim for compensation benefits, effective as of the original
45 date of filing.

1 M. If the insurance carrier or self-insurer does not issue a notice of
2 claim status denying the claim within twenty-one days from the date the
3 carrier is notified by the commission of a claim or of a petition to reopen,
4 the carrier shall pay immediately compensation as if the claim were accepted,
5 from the date the carrier is notified by the commission of a claim or
6 petition to reopen until the date upon which the carrier issues a notice of
7 claim status denying such claim. Compensation includes medical, surgical and
8 hospital benefits. This section shall not apply to cases involving seven
9 days or less of time lost from work.

10 Sec. 2. Intent

11 It is the intent of the legislature that the amendments made to section
12 23-1061, subsection H, Arizona Revised Statutes, as amended by this act, are
13 to only directly overrule the court decision in Gerhardt v. Industrial
14 Commission of Arizona, 181 Ariz. 215, 889 P.2d 8 (1994) in which the court
15 allowed an injured worker to file a petition to reopen a claim for workers'
16 compensation benefits that had been previously denied by the workers'
17 compensation carrier, but the amendments are not intended to overrule any
18 other court decision.

APPROVED BY THE GOVERNOR MAY 7, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2008.